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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of: Earle Harry Sherrod et al.

Appln. No.: 09/825,609

Filed: April 3, 2001

For: ABSORBENT INSERT FOR USE WITH AN
OUTER ABSORBENT GARMENT

Examiner: Karin M. Reichle

Art Unit: 3761

Attorney Docket No: 659/695 (KC 14,897)

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL

Sir:

Attached is/are:

- ☒ Appellants Reply Brief
☒ Return Receipt Postcard

Fee calculation:

- ☒ No additional fee is required.
☐ Small Entity.
☐ An extension fee in an amount of \$_____ for a _____-month extension of time under 37 C.F.R. § 1.136(a).
☐ A petition or processing fee in an amount of \$_____ under 37 C.F.R. § 1.17(____).
☐ An additional filing fee has been calculated as shown below:

| | | | | | Small Entity | | | Not a Small Entity | |
|---|-------------------------------------|-------|------------------------------------|------------------|--------------|-----------|----|--------------------|-----------|
| | Claims Remaining After Amendment | Minus | Highest No. Previously Paid For | Present Extra | Rate | Add'l Fee | or | Rate | Add'l Fee |
| Total | | Minus | | | x \$25= | | | x \$50= | |
| Indep. | | Minus | | | X100= | | | x \$200= | |
| First Presentation of Multiple Dep. Claim | | | | | +\$180= | | | +\$360= | |
| | | | | | Total | \$ | | Total | \$ |

Fee payment:

- ☐ A check in the amount of \$_____ is enclosed.
☐ Please charge Deposit Account No. 23-1925 in the amount of \$_____. A copy of this Transmittal is enclosed for this purpose.
☐ Payment by credit card in the amount of \$_____ (Form PTO-2038 is attached).
☒ The Director is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 associated with this paper (including any extension fee required to ensure that this paper is timely filed), or to credit any overpayment, to Deposit Account No. 23-1925.

Respectfully submitted,

Amanda M. Church
Amanda M. Church (Reg. No. 52,469)

October 27, 2005
Date

10/28/05

AP/3761 Jfw

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Our Case No. 659/695

K-C Ref. No. 14,897

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | |
|------------------------------|---|---------------------------|
| In re Application of: |) | |
| Earle Harry Sherrod et al. |) | |
| Serial No. 09/825,609 |) | Examiner Karin M. Reichle |
| Filing Date: April 3, 2001 |) | Group Art Unit No. 3761 |
| For ABSORBENT INSERT FOR USE |) | |
| WITH AN OUTER ABSORBENT |) | |
| GARMENT |) | |

APPELLANTS REPLY BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Reply is in response to the Examiner's Answer dated September 6,
2006.

I. ARGUMENT

A. Claims 1-3, 6, 9, 12-14, and 18-22 are patentable over Unicharm and Matsuda

1. The Examiner asserts that Appellants' arguments, with respect to the objectives of Unicharm and Matsuda, are too narrow. Appellants respectfully disagree. The applicants in Unicharm viewed side leakage as a problem of the prior art diapers. They hypothesized that this was because the backing layer was impermeable. Col. 1, l. 37-43. The application talks broadly about this problem with prior art devices, col. 1, l. 37-47, before referring specifically to prior art devices which fall into this category. Col. 1, l. 48 to col. 2, l. 18. This appears to be the only problem that the applicants were concerned with solving. Their solution, it appears, is to channel excess fluid from the insert to the article, rather than have such excess fluid leak from the side edge of the insert. It does not follow, as the Examiner asserts, that Unicharm necessarily desires or intends to utilize the core of the absorbent to absorb liquid as much as possible, i.e. desires to pass liquid to the entire core including the sides of the core, and desires or intends to pass any excess liquid to an equivalent underlying area rather than to the sides of the insert. Examiner's Answer, dated September 6, 2005, p. 6. This is pure conjecture and finds no support in the text of the reference. Certainly, it is not sufficient to motivate one of ordinary skill in the art to combine or modify the references cited.

Indeed, the reference actually discloses that it would be beneficial to prevent fluid leakage from the sides of the article by preventing lateral movement of the liquid once it contacts the impermeable backing layer. Unicharm does not promote distribution of fluid to the periphery of the article.

Moreover, the Examiner concedes that the function of the delay layers in Matsuda is to cause fluid to spread laterally and longitudinally. Examiner's Answer dated September 6, 2005, p. 7. As discussed above, this is precisely what Unicharm was trying to avoid. Therefore, the Examiner's argument with

respect to Appellants' narrowing of the reference must fail. Appellants respectfully request that this rejection be reversed.

2. The Appellants note that the Examiner issued a new ground of rejection for Claim 1. Examiner's Answer, p. 7. The Examiner states that although the Examiner chose to reject the claims on the combination of Unicharm and Matsuda, it could be argued that Unicharm alone teaches the structure of claim 1. Appellants respectfully disagree.

While it is not entirely clear to Appellants how anyone skilled in the art could interpret Unicharm as including each and every feature of the claimed invention, it appears as if the Examiner is attempting to call the same structure in Unicharm both the garment-facing outer surface and the water insoluble continuous fluid impermeable delay layer. This is improper, especially in view of the ordered relationships claim by Appellants, i.e. that "said at least one delay layer is positioned between said at least one absorbent layer and said garment facing outer surface."

It appears that the Examiner attempts to equate element 31 of Unicharm (see Fig. 6-B) with the garment facing outer surface. Element 31 includes the fluid impermeable border and the portion in the middle that has pores or holes, allegedly making element 31 at least partially fluid permeable. Then, the Examiner equates the center portion of 31 with the delay layer as well. Not only is this characterization improper and incorrect, but also nonsensical. Appellants request the Board to disregard this argument.

B. Claims 10 and 11 are patentable over Matsuda, Unicharm, and Poulsen

Again, the Examiner asserts that the Appellants' arguments attempt to narrow the teachings of the prior art. As discussed above, the arguments are not narrowing and the combination of Unicharm and Matsuda does not render the presently claimed invention obvious. To be clear, Appellants understand that Poulsen is not being used for its teaching of a delay layer. However, Appellants

point out that Unicharm and Matsuda do not provide the required motivation to modify or combine said references and Poulsen also does not satisfy this requirement. Therefore, because Claim 1 is not obvious in view of the cited references, it follows that the claims that depend therefrom – claims 10 and 11 – also are not obvious. For this reason alone, the rejection should be reversed.


Secondly, it would not have been obvious to combine Poulsen with Unicharm and Matsuda because, upon reading Poulsen, one of ordinary skill in the art would be lead away from making the claimed invention. The Examiner attempts to use Poulsen for its teaching of a first absorbent layer having a primary surface area less than the primary surface area of a second absorbent layer. The reference, however, teaches “layers of absorbing material being separated by intermediate liquid layers detachably interconnected.” Col. 1, l. 48-50. In such a napkin, only the innermost layer will in the first instance serve to absorb the menstrual discharge and, when convenient, the used layer can be torn off whereupon the subsequent layer will appear clean and ready for use.” Col. 1, l. 51-55. Clearly, this is the intended purpose of the multilayers of the reference and one of ordinary skill in the art would not be motivated to replace the absorbent core of Unicharm or Matsuda with the detachable layers, as disclosed in Poulsen.

Unicharm describes an absorbent core interposed between the facing layer and the backing layer. Col. 4, l. 21-25. Unicharm further teaches bonding the facing layer to the backing layer, making it impractical to remove the absorbent core. Col. 4, l. 48-52. Therefore, the combination must not be obvious. Because it would not have been obvious to modify the article of Unicharm in view of Matsuda or Poulsen, Appellants request this rejection also be withdrawn.

II. CONCLUSION

The cited references in combination with the Examiner's assertions do not establish a *prima facie* case of obviousness. Accordingly, the rejection should be REVERSED.

Respectfully submitted,


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